IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.123 OF 2004

IN

SUMMARY SUIT NO.2926 OF 2003

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Ganpatlal Mohanlal Dagliya ...Plaintiff

v/s.

Paleshkumar Bherumal Dhakad

@ Jain ...Defendant

...

Mr.R.Dave i/b N.N.Vaishnav for the Plaintiff.

Mr.S.J.Ghogare for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 13TH MARCH,2007

P.C.:

The Plaintiff's suit is based on promissory note

which is alleged to have been signed by the Defendant. The Defendant has filed a reply. The Defendant denies that he has signed the promissory note. According to the Plaintiff, though the amount is of Rs.5 lakh, the amount was paid by cash and not by cheque. What is further to be seen is that the Plaintiff has filed the suit even without issuing demand notice to the Defendant. Perusal of the promissory note shows that even according to the Plaintiff the Defendant promised to pay the mount i.e. Rs.5 lakh with interest on demand. But the suit has been filed without making a demand. An explanation that is given is that the suit was filed without even demanding the amount because the Defendant was trying to dispose of the property. Even assuming that is to be so, in view of the promissory note which says that the amount will become payable only on demand, in my opinion, it was necessary for the Plaintiff to issue demand notice to the Defendant. The conduct of the Plaintiff of not issuing demand notice claiming that the amount is paid in cash when admittedly there is a prohibition contained in law on payment of big amount by cash raises doubt about the genuineness of the transaction on which the Plaintiff is relying. In my opinion,

therefore, the Defendant has substantial defence to offer. The defendant, hence, is entitled to leave to defend. Summons for judgment is disposed of. Defendant is granted unconditional leave to defend the suit. Suit be transferred to commercial cause list. Written statement to be filed within four weeks from today.

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